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17 *Attorneys for Plaintiff Kawhi Leonard*

18 **UNITED STATES DISTRICT COURT**
19 **SOUTHERN DISTRICT OF CALIFORNIA**

20
21 KAWHI LEONARD,
22 Plaintiff,
23
24 v.
25 NIKE, INC.,
26 Defendant.

Case No. 3:19-cv-01035-BAS-BGS
**PLAINTIFF'S ANSWER TO
DEFENDANT'S COUNTERCLAIMS**

PLAINTIFF’S ANSWER TO DEFENDANT’S COUNTERCLAIMS

Plaintiff Kawhi Leonard (“Plaintiff” or “Leonard”) hereby submits this answer (the “Answer”) to the counterclaims asserted by Defendant Nike, Inc. (“Defendant” or “Nike”) in Defendant’s *Answer and Counterclaim to Complaint for Declaratory Relief* dated July 17, 2019 (the “Counterclaims”) [Dkt. No. 16].

1. Plaintiff denies each allegation in Paragraph 1 of the Counterclaims.

2. Plaintiff denies each allegation in Paragraph 2 of the Counterclaims.

3. Paragraph 3 of the Counterclaims contains a summary of Defendant’s counterclaims to which no response is required. To the extent Paragraph 3 makes factual allegations, Plaintiff denies each such allegation.

4. The Nike Agreement¹ is a written document that speaks for itself. Plaintiff refers to the Nike Agreement for its contents. To the extent a response is required, Plaintiff denies each allegation in Paragraph 4 of the Counterclaims, except admits that the Nike Agreement, as extended, was in effect from October 2011 through September 2018.

5. Plaintiff denies each allegation in Paragraph 5 of the Counterclaims, except admits that Defendant obtained copyright registration no. VA0002097900.

6. The Nike Agreement is a written document that speaks for itself. Plaintiff refers to the Nike Agreement for its contents. To the extent a response

¹ All capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in Plaintiff’s *Complaint for Declaratory Relief*, dated June 3, 2019 (the “Complaint”) [Dkt. No. 1].

1 is required, Plaintiff denies each allegation in Paragraph 6 of the Counterclaims,
 2 except admits that he signed the Nike Agreement.

3
 4 7. The article originally entitled “Kawhi Leonard Says ‘The Claw’
 5 Logo Was His Idea” is a written document that speaks for itself. To the extent a
 6 response is required, Plaintiff denies each allegation in Paragraph 7 of the
 7 Counterclaims.
 8

9 8. Plaintiff denies each allegation in Paragraph 8 of the Counterclaims.

10 9. Plaintiff denies each allegation in Paragraph 9 of the Counterclaims.

11
 12 10. Plaintiff avers that Paragraph 10 contains legal arguments to which
 13 no response is required. To the extent Paragraph 10 makes factual allegations,
 14 Plaintiff denies each allegation in Paragraph 10 of the Counterclaims, except
 15 admits Defendant has alleged certain counterclaims against Plaintiff, which are
 16 identified in Defendant’s Counterclaims.
 17

18 **PARTIES**

19
 20 11. Plaintiff admits upon information and belief the allegations in
 21 Paragraph 11 of the Counterclaims.

22 12. Plaintiff avers that Paragraph 12 of the Counterclaims asserts a
 23 legal conclusion to which no response is required.
 24

25 **JURISDICTION AND VENUE**

26 13. Plaintiff avers that Paragraph 13 of the Counterclaims asserts a legal
 27 conclusion to which no response is required.
 28

15. Plaintiff avers that Paragraph 15 of the Counterclaims asserts a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies each allegation in Paragraph 15 of the Counterclaims.

16. Plaintiff avers that Paragraph 16 of the Counterclaims asserts a legal conclusion to which no response is required.

17. Plaintiff avers that Paragraph 17 of the Counterclaims asserts a legal conclusion to which no response is required. To the extent a response is required, Plaintiff denies each allegation in Paragraph 17 of the Counterclaims.

FACTS

18. The Nike Agreement is a written document that speaks for itself. Plaintiff refers to the Nike Agreement for its contents. To the extent a further response is required, Plaintiff denies each allegation of Paragraph 18 of the Counterclaims, except admits that he entered into the Nike Agreement on October 26, 2011.

19. Plaintiff denies each allegation of Paragraph 19 except admits that he executed the Nike Agreement. To the extent a further response is required, Plaintiff admits that he entered into the Nike Agreement on October 26, 2011. Otherwise denied.

1 20. The Nike Agreement is a written document that speaks for itself.
2 Plaintiff refers to the Nike Agreement for its contents. To the extent a further
3 response is required, Plaintiff denies the allegations of Paragraph 20 of the
4 Counterclaims except admits that the Nike Agreement states that it would be
5 effective as of October 1, 2011.
6

7
8 21. Plaintiff admits the allegations in Paragraph 21 of the
9 Counterclaims.

10 22. The Nike Agreement is a written document that speaks for itself.
11 Plaintiff refers to the Nike Agreement for its contents. To the extent a further
12 response is required, Plaintiff admits that a document entitled “NIKE Standard
13 Terms & Conditions” was attached to the Nike Agreement.
14

15
16 23. The Nike Agreement is a written document that speaks for itself.
17 Plaintiff refers to the Nike Agreement for its contents.

18 24. The Nike Agreement is a written document that speaks for itself.
19 Plaintiff refers to the Nike Agreement for its contents.
20

21 25. The Nike Agreement is a written document that speaks for itself.
22 Plaintiff refers to the Nike Agreement for its contents.
23

24 26. Plaintiff admits the allegations of Paragraph 26 of the
25 Counterclaims.
26

1 27. Plaintiff denies the allegations in Paragraph 27 of the Counterclaims,
2 except admits that during the term of the Nike Agreement, NIKE submitted to
3 Leonard proposed designs.

4
5 28. Plaintiff denies the allegations in Paragraph 28 of the Counterclaims.

6 29. Plaintiff admits the allegations in Paragraph 29 of the
7 Counterclaims.

8
9 30. Plaintiff does not have sufficient knowledge or information to form
10 a belief about the truth of the allegations in Paragraph 30 of the Counterclaims
11 and denies the allegations on that basis.

12
13 31. The Nike Agreement is a written document that speaks for itself.
14 Plaintiff refers to the Nike Agreement for its contents.

15
16 32. The Nike Agreement is a written document that speaks for itself.
17 Plaintiff refers to the Nike Agreement for its contents.

18 33. Plaintiff denies the allegations in Paragraph 33 of the Counterclaims.

19
20 34. The article originally entitled “Kawhi Leonard Says ‘The Claw’
21 Logo Was His Idea” is a written document that speaks for itself. Plaintiff refers
22 to that document for its contents. To the extent a response is required, Plaintiff
23 denies each allegation in Paragraph 34 of the Counterclaims.

24
25 35. Plaintiff denies each allegation in Paragraph 35 of the
26 Counterclaims, except Plaintiff admits upon information and belief that
27 Defendant filed a copyright application for the Leonard Logo.
28

1 36. Plaintiff denies each allegation in Paragraph 36 of the
2 Counterclaims.

3
4 37. Plaintiff denies the allegations in Paragraph 37 of the Counterclaims,
5 except Plaintiff admits that Plaintiff filed a U.S. federal trade mark application
6 for the Leonard Logo on or about November 7, 2017, which ultimately issued as
7 Registration No. 5,608,427 on or around November 18, 2019.
8

9 38. The term “directed to” in Paragraph 38 of the Counterclaims is
10 ambiguous, thereby rendering Plaintiff incapable of answering this allegation.
11 Plaintiff refers to US trademark Registration No. 5,608,427 for its contents.
12

13 39. The Statement of Use referred to in Paragraph 39 of the
14 Counterclaims is a publicly available document and Plaintiff refers to that
15 document for its contents.
16

17 40. Plaintiff admits the allegations in Paragraph 40 of the
18 Counterclaims.
19

20 41. Plaintiff denies each allegation in Paragraph 41 of the
21 Counterclaims, except admits that the same design appears in the Leonard
22 Registration and the Claw Design reproduced in Paragraph 28 of the
23 Counterclaims.
24

25 42. Plaintiff denies each allegation in Paragraph 42 of the
26 Counterclaims.
27
28

1 43. Plaintiff lacks sufficient knowledge or information to form a belief
2 about the truth of the allegations in Paragraph 43 of the Counterclaims and denies
3 the allegations of Paragraph 43 on that basis.
4

5 44. Plaintiff denies the allegations of Paragraph 44 of the
6 Counterclaims, except admits that Defendant notified him in or about December
7 2018 that it believed that Plaintiff's use of the Leonard Logo violated the Nike
8 Agreement.
9

10 45. Plaintiff denies each allegation of Paragraph 45 of the
11 Counterclaims, except admits that he filed his Complaint on June 3, 2019, and
12 refers to the Complaint for its contents.
13

14 46. Plaintiff denies each allegation of Paragraph 46 of the
15 Counterclaims on the basis that the Complaint speaks for itself. Plaintiff refers to
16 the Complaint for its contents.
17

18 47. Plaintiff denies each allegation in Paragraph 47 of the
19 Counterclaims.
20

21 **ANSWER TO DEFENDANT'S FIRST CLAIM FOR RELIEF**

22 48. In answer to the allegations in Paragraph 48 of the Counterclaims,
23 Plaintiff realleges each admission, averment and denial set forth herein above in
24 response to Paragraphs 1-47 of the Counterclaims.
25

26 49. Plaintiff avers that Paragraph 49 of the Counterclaims contains a
27 legal conclusion for which no response is required.
28

1 50. Plaintiff denies each allegation of Paragraph 50 of the
2 Counterclaims, except admits that the US Copyright Office issued a copyright
3 registration no. VA0002097900 to Defendant.
4

5 51. The Nike Agreement is a written contract that speaks for itself.
6 Plaintiff refers to the Nike Agreement for its contents. To the extent a response
7 is required, Plaintiff denies the allegations in Paragraph 51 of the Counterclaims.
8

9 52. Plaintiff denies each allegation of Paragraph 52 of the
10 Counterclaims.
11

12 53. Plaintiff avers that Paragraph 53 of the Counterclaims contains legal
13 conclusions to which no response is required. To the extent Paragraph 53 alleges
14 facts, Plaintiff denies each such factual allegation in that Paragraph.
15

16 54. Plaintiff avers that Paragraph 54 of the Counterclaims contains legal
17 conclusions to which no response is required. To the extent Paragraph 54 alleges
18 facts, Plaintiff denies each such factual allegation in that Paragraph..
19

20 55. Plaintiff denies each allegation of Paragraph 55 of the
21 Counterclaims, and further alleges that Plaintiff is the author of the Leonard
22 Logo.
23

24 56. Plaintiff lacks sufficient knowledge or information to form a belief
25 as to the allegations of Paragraph 56, and further avers that Nike has no
26 ownership rights in or to the Leonard Logo.
27
28

ANSWER TO DEFENDANT'S SECOND CLAIM FOR RELIEF

57. In answer to the allegations in Paragraph 57 of the Counterclaim, Plaintiff realleges each admission, averment and denial set forth herein above in response to Paragraphs 1-56 of the Counterclaims.

58. Plaintiff avers that Paragraph 58 of the Counterclaims contains legal conclusions for which is no answer is required.

59. Plaintiff denies each allegation of Paragraph 59 of the Counterclaims, except admits that the U.S. Copyright Office registered Registration No. VA0002097900 to Nike.

60. Plaintiff denies each allegation of Paragraph 60 of the Counterclaims.

61. Plaintiff denies each allegation of Paragraph 61 of the Counterclaims.

62. Plaintiff avers that Paragraph 62 of the Counterclaims contains legal conclusions for which no response is required. To the extent Paragraph 62 of the Counterclaims contains factual allegations, Plaintiff denies each such allegation.

63. Plaintiff avers that Paragraph 63 contains legal conclusions which for no response is required. To the extent Paragraph 63 contains factual allegations, Plaintiff denies each allegation of Paragraph 63 of the Counterclaims except admits to receiving a letter from Defendant, and refers to that letter for its contents.

1 64. Plaintiff avers that Paragraph 64 of the Counterclaims contains legal
2 conclusions for which no response is required. To the extent Paragraph 64 of the
3 Counterclaims contains factual allegations, Plaintiff denies each such allegation.
4

5 65. Plaintiff avers that Paragraph 65 of the Counterclaims contains legal
6 conclusions for which no response is required. To the extent Paragraph 65 of the
7 Counterclaims contains factual allegations, Plaintiff denies each such allegation.
8

9 66. Plaintiff admits the allegations of Paragraph 66 of the
10 Counterclaims.
11

12 **ANSWER TO DEFENDANTS' THIRD CLAIM FOR RELIEF**

13 67. In answer to the allegations in Paragraph 67 of the Counterclaim,
14 Plaintiff realleges each admission, averment and denial set forth herein above in
15 response to Paragraphs 1-66 of the Counterclaims.
16

17 68. The Nike Agreement is a written contract that speaks for itself.
18 Plaintiff refers to the Nike Agreement for its contents. To the extent a response
19 is required, Plaintiff denies each allegation in Paragraph 68 of the Counterclaims.
20

21 69. Plaintiff denies the allegations of Paragraph 69 of the
22 Counterclaims, except admits that, on or about April 14, 2014, Plaintiff provided
23 Defendant with the Leonard Logo. Plaintiff further avers that Leonard created
24 the Leonard Logo prior to the initial term of the Nike Agreement and while
25 attending SDSU.
26
27
28

1 70. To the extent Paragraph 70 of the Counterclaims refers to interview
2 statements, those statements are written documents that speak for themselves.
3
4 Plaintiff refers to those documents for their contents. To the extent a response is
5 required, Plaintiff denies each allegation in Paragraph 70 of the Counterclaim.

6 71. Plaintiff denies the allegations of Paragraph 71 of the
7
8 Counterclaims, except admits that he filed an application with the U.S. Copyright
9 Office to register his Leonard Logo.

10 72. Plaintiff avers that Paragraph 72 of the Counterclaims contains legal
11 conclusions for which no response is required. To the extent Paragraph 72 of the
12 Counterclaims contains factual allegations, Plaintiff denies each such allegation.

13
14 **ANSWER TO DEFENDANT'S FOURTH CLAIM FOR RELIEF**

15
16 73. In answer to the allegations in Paragraph 73 of the Counterclaim,
17 Plaintiff realleges each admission, averment and denial set forth herein above in
18 response to Paragraphs 1-72 of the Counterclaims.

19
20 74. The Nike Agreement is a written contract that speaks for itself.
21 Plaintiff refers to the Nike Agreement for its contents. To the extent a response
22 is required, Plaintiff denies each allegation of Paragraph 74 of the Counterclaims,
23 except admits that he entered into the Nike Agreement on or about October 26,
24 2011.
25
26
27
28

1 75. Plaintiff avers that Paragraph 75 of the Counterclaims asserts legal
2 conclusions for which no response is required. To the extent Paragraph 72 of the
3 Counterclaims contains factual allegations, Plaintiff denies each such allegation.
4

5 76. Plaintiff avers that Paragraph 76 of the Counterclaims asserts legal
6 conclusions for which no response is required. To the extent Paragraph 72 of the
7 Counterclaims contains factual allegations, Plaintiff denies each such allegation
8

9 77. Plaintiff avers that Paragraph 77 of the Counterclaims asserts legal
10 conclusions for which no response is required. To the extent Paragraph 77 of the
11 Counterclaims contains factual allegations, Plaintiff denies each such allegation.
12

13 78. Plaintiff avers that Paragraph 78 of the Counterclaims asserts legal
14 conclusions for which no response is required. To the extent Paragraph 78 of the
15 Counterclaims contains factual allegations, Plaintiff denies each such allegation.
16

17 79. Plaintiff avers that Paragraph 79 of the Counterclaims asserts legal
18 conclusions for which no response is required. To the extent Paragraph 79 of the
19 Counterclaims contains factual allegations, Plaintiff denies each such allegation.
20

21 **ANSWER TO DEFENDANT'S FIFTH CLAIM FOR RELIEF.**

22 80. In answer to the allegations in Paragraph 80 of the Counterclaim,
23 Plaintiff realleges each admission, averment and denial set forth herein above in
24 response to Paragraphs 1-79 of the Counterclaims.
25

26 81. The Nike Agreement is a written contract that speaks for itself.
27
28 Plaintiff refers to the Nike Agreement for its contents. To the extent a response

1 is required, Plaintiff denies each allegation of Paragraph 81 of the Counterclaims,
2 except admits that he entered into the Nike Agreement on October 26, 2011.

3
4 82. Plaintiff avers that Paragraph 82 asserts legal conclusions for which
5 no response is required.

6
7 83. Plaintiff avers that Paragraph 83 asserts legal conclusions for which
8 no response is required. To the extent a response is required, Plaintiff denies
9 each allegation of Paragraph 83 of the Counterclaims.

10
11 84. Plaintiff avers that Paragraph 84 asserts legal conclusions for which
12 no response is required. To the extent a response is required, Plaintiff denies
13 each allegation of Paragraph 84 of the Counterclaims.

14
15 85. Plaintiff avers that Paragraph 85 of the Counterclaims asserts a legal
16 conclusion for which no response is required. To the extent a response is
17 required, Plaintiff denies each allegation of Paragraph 85 of the Counterclaims.

18
19 86. Plaintiff avers that Paragraph 86 of the Counterclaims asserts legal
20 conclusions for which no response is required. To the extent a response is
21 required, Plaintiff denies each allegation of Paragraph 86 of the Counterclaims.

22
23 **ANSWER TO DEFENDANT'S SIXTH CLAIM FOR RELIEF**

24 87. In answer to the allegations in Paragraph 87 of the Counterclaim,
25 Plaintiff re alleges each admission, averment and denial set forth herein above in
26 response to Paragraphs 1-86 of the Counterclaims.
27

1 88. The Nike Agreement is a written contract that speaks for itself.
 2
 3 Plaintiff refers to the Nike Agreement for its contents. To the extent a response
 4 is required, Plaintiff denies each allegation of Paragraph 88 of the Counterclaims,
 5 except admits that he entered into the Nike Agreement on October 26, 2011.

6 89. Plaintiff avers that Paragraph 89 asserts legal conclusions for which
 7
 8 no response is required.

9 90. Plaintiff avers that Paragraph 90 asserts legal conclusions for which
 10
 11 no response is required. To the extent a response is required, Plaintiff denies
 12 each allegation of Paragraph 90 of the Counterclaims.

13 91. Plaintiff avers that Paragraph 91 asserts legal conclusions for which
 14
 15 no response is required. To the extent a response is required, Plaintiff denies
 16 each allegation of Paragraph 91 of the Counterclaims.

17 92. Plaintiff avers that Paragraph 92 asserts legal conclusions for which
 18
 19 no response is required. To the extent a response is required, Plaintiff denies
 20 each allegation of Paragraph 92 of the Counterclaims.

21 22 **GENERAL DENIAL**

23
 24 Except as otherwise expressly admitted in Paragraphs 1 through 92
 25 above, Plaintiff denies each and every allegation of Paragraphs 1 through 92 of
 26 the Counterclaims, including, without limitation, the headings and sub-headings
 27 contained in the Counterclaims, and specifically deny any liability to Defendant.
 28

1 **AFFIRMATIVE DEFENSES**

2 Plaintiff states the following as affirmative defenses without conceding
3
4 that Plaintiff has either burden of pleading or of persuasion as to each of these
5 legal principles.

6 **FIRST AFFIRMATIVE DEFENSE**

7
8 **(Failure to State a Claim)**

9 Defendant's Counterclaims and each count therein fails to state facts
10 sufficient to constitute a claim for relief against Plaintiff.
11

12 **SECOND AFFIRMATIVE DEFENSE**

13 **(Copyright Ownership)**

14 Defendant's Counterclaims and each count therein fail because Plaintiff,
15
16 not Defendant, is the exclusive owner of the Leonard Logo.

17 **THIRD AFFIRMATIVE DEFENSE**

18 Defendant has failed to mitigate damages.
19

20 **FOURTH AFFIRMATIVE DEFENSE**

21 Defendant's Counterclaims are barred by the doctrines of waiver, estoppel
22 and unclean hands.
23

24 **FIFTH AFFIRMATIVE DEFENSE**

25 Defendant's Counterclaims are barred by the doctrine of laches and
26 acquiescence.
27
28

1 **SIXTH AFFIRMATIVE DEFENSE**

2 Any harm suffered by Defendant is the result of its own conduct and/or
3
4 non-performance.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 No acts or omissions by the Plaintiff caused any harm to Defendant.
7

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 Defendant has not suffered any injury.

10 **ADDITIONAL DEFENSES**

11
12 Plaintiff reserves the right to assert additional defenses based on
13 information learned or obtained during discovery.
14

15
16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiff respectfully requests that the Court:

18 (1) Judgment be entered in Plaintiff's favor as to the entire action, and
19
20 dismiss all Counterclaims by Defendant with prejudice;

21 (2) Plaintiff be awarded its costs and expenses of suit, including reasonable
22 attorneys' fees, incurred in the defense of Defendant's Counterclaims; and
23

24 (3) Plaintiff be awarded all such other and further relief as deemed just and
25 proper.
26
27
28

1 Dated: August 28, 2019

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Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on August 28, 2019.

/s/ Peter R. Ginsberg